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Court of Appeals  
Division III  
State of Washington

34399-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

TREVOR R. MCCLURE, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT'S ASSIGNMENT OF ERROR**

The evidence is insufficient to sustain appellant's conviction for first degree escape.

## **II. ISSUES PRESENTED**

1. Is a defendant in custody when he has been ordered by the trial court pursuant to a court order to enter treatment at a residential treatment facility, and, if so, was sufficient evidence presented at trial to establish these facts?
2. Was sufficient evidence presented that the individual who was ordered to engage in treatment and ran from the treatment facility was the defendant?
3. Whether the trial court erred in overruling certain hearsay objections made by the defendant?
4. Whether costs should be imposed if the State substantially prevails on appeal?

## **III. STATEMENT OF THE CASE**

Trevor McClure was charged in Spokane County Superior Court with one count of first degree escape, occurring on or about September 27, 2015. CP 1. The information alleged that he had committed the crime of first degree escape while he was detained pursuant to a felony conviction for possession of a controlled substance. CP 1. His case proceeded to trial.

Prior to the date of the defendant's escape, on September 25, 2015, the Spokane County Superior Court found that the defendant had violated the terms of the Drug Offender Sentencing Alternative (DOSA) sentence

the court previously imposed on a felony charge of possession of a controlled substance. Ex. 6. In an order modifying the original DOSA sentence, (as opposed to revoking the DOSA sentence), the court ordered Mr. McClure to re-enter treatment at ABHS (American Behavioral Health Systems) on September 27, 2015 and strictly comply with all program rules and requirements, and ordered a discharge date to be determined by ABHS. Ex. 6; RP 151. The order modifying the sentence indicates that Mr. McClure, his attorney, the attorney for the State and his Community Corrections Officer (CCO) Tonya Wick were all present for the modification hearing. Ex. 6 at 1.

Steven Lowe testified that he worked for ABHS driving the transport van. RP 126. He testified that in September, he transported three people from the jail to ABHS, but two of the three fled from the ABHS building before entering. RP 128. He could not recall the names of the fleeing individuals and did not recognize the defendant at trial. RP 129, 134.

Sheila Norris testified that she worked as a transportation and admissions supervisor for ABHS and she received an email regarding three individuals who did not come into treatment on September 27. RP 136, 143. She testified that if a person does not come into ABHS and they are under court jurisdiction or the Department of Corrections, ABHS notifies the

Community Corrections Officer. RP 137-138. She testified that Mr. McClure's name "sounded familiar" and that he did not arrive at ABHS. RP 138. Ms. Norris testified that although she did not recall contacting Mr. McClure's CCO, his CCO would have been contacted the next business day. RP 139. She testified that to her knowledge, Mr. McClure never entered treatment with ABHS after September 27. RP 142.

Mr. McClure's Community Corrections Officer testified that she was responsible for supervising offenders that have been placed on Community Custody from the court and Mr. McClure was on her caseload. RP 148. She testified that she had met him approximately four times. RP 148. She supervised him from May 19, 2015 to November 20, 2015. RP 148. During those dates, Ms. Wick was assigned to supervise offenders sentenced to residential DOSA sentences. RP 149. Ms. Wick testified that when a person is ordered by the court to serve a DOSA sentence, the offender's movement is restricted when they are ordered to treatment. RP 150.

Ms. Wick testified that she was notified that Mr. McClure did not arrive at ABHS as ordered by the modification order signed on September 25, 2015. RP 151. Ms. Wick contacted Mr. McClure's mother to see if he had contacted her. Ms. Wick learned that he hadn't and when

Mr. McClure did not report to Ms. Wick, she issued a warrant for his arrest. RP 152-153. She testified that to her knowledge, Mr. McClure did not enter treatment at ABHS after September 27, 2015. RP 154.

The Defendant moved to dismiss the charge after the State rested, arguing (1) the State failed to present sufficient non-hearsay evidence to prove that the defendant was the Mr. McClure who failed to show up to ABHS, and (2) that Mr. McClure was neither in custody nor in confinement as required for a defendant to commit the crime of escape in the first degree. RP 165-173; CP 13-20.

In its written ruling, the Court found that Sheila Norris testified concerning defendant's failure to arrive on or after October 27, 2015.<sup>1</sup> CP 83. The Court further found that Tonya Wick testified that she supervised the defendant, identified him in court, and identified the order modifying the sentence of Trevor McClure and ordering him back into treatment at ABHS. CP 83-84. The court stated, "Ms. Wick's in-court identification of the defendant satisfies the state's burden of individual identification." It further concluded that, "although difficult to decipher at times, Ms. Norris' testimony did indicate that she had firsthand knowledge

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<sup>1</sup> The State can only assume that this is a scrivener's error considering that the date of the offense was September 27, 2015.

that the defendant did not report to the ABHS facility on or after the requisite date.”<sup>2</sup> CP 84.

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<sup>2</sup> During trial, the court orally ruled on the motion:

There was an order that was presented and admitted by the State modifying the sentence. There was no witness that Mr. McClure was the individual who signed off on this. However, Ms. Wick testified that she is familiar with Mr. McClure, had met him about four times, was supervising him, and was familiar with this order. The Court does find that there is a sufficient nexus based upon that testimony, especially given that the Court is to view the facts in the light most favorable to the non-moving party, being the State. So the court does find a sufficient nexus between the evidence and Mr. McClure, who’s sitting here and was identified by the Department of Corrections officer.

I think the bigger issue is the defendant’s motion to dismiss with the allegation that the State has failed to make a prima facie showing that Mr. McClure failed to report being that the testimony was somewhat – well, it wasn’t real intelligible as to his reporting or not reporting, and, to some extent, was based, perhaps upon hearsay because some of the foundation wasn’t necessarily laid with Ms. Norris’ testimony.

Once again, the Court has to review the evidence in the light most favorable to the State to see if it made a prima facie showing. Here, there was some evidence presented that he didn’t report. The Court is, to some extent, unable to understand if it was based solely upon personal knowledge or based upon hearsay because the witness testified both ways. The foundation for that wasn’t made extremely clear, but the State just had to make a prima facie showing as to those element, which the Court finds they have done. So the Court will deny the motion to dismiss.

RP 177-178.

However, the written order does not incorporate the oral ruling by reference.

The jury convicted the defendant as charged on March 2, 2016, and he was sentenced to a low-end standard range sentence of 53 months. CP 67, 70-71. He timely appealed.

#### IV. ARGUMENT

Mr. McClure challenges the sufficiency of the evidence supporting his conviction for first degree escape. “The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When the sufficiency of the evidence is challenged in a criminal case, *all* reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Id.* A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. *Id.* In a sufficiency of the evidence challenge, the court is highly deferential to the decision of the jury. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014).

Credibility determinations are for the trier of fact and are not subject to review on appeal. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). The appellate court must defer to the trier of fact on issues of

conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Id.*

Our Supreme Court has stated:

It is the province of the jury to weigh the evidence, under proper instructions, and determine the facts. It is the province of the jury to believe, or disbelieve, any witness whose testimony it is called upon to consider. If there is substantial evidence (as distinguished from a scintilla) on both sides of an issue, what the trial court believes after hearing the testimony, and what this court believes after reading the record, is immaterial. The finding of the jury, upon substantial, conflicting evidence properly submitted to it, is final.

*State v. Williams*, 96 Wn.2d 215, 222, 634 P.2d 868 (1981); *see, also, State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992) (this Court defers to the jury's determination regarding conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence).

**A. MR. MCCLURE WAS “IN CUSTODY” WITHIN THE MEANING OF THE ESCAPE STATUTE WHEN HE FAILED TO REPORT TO TREATMENT AS REQUIRED BY COURT ORDER.**

RCW 9A.76.110(1) provides that a person is guilty of escape in the first degree if he or she knowingly escapes from custody *or* a detention facility while being detained pursuant to a conviction of a felony or equivalent juvenile offense. RCW 9A.76.110(2). Mr. McClure was

charged with knowingly escaping from “custody,” rather than from a detention facility. CP 1.<sup>3</sup>

“Custody” means “restraint pursuant to a lawful arrest or an order of the court, or any period of service on a work crew.” RCW 9A.76.010(2);<sup>4</sup> CP 33. “Restraint” means an “act of restraining, hindering, checking, or holding back from some activity or expression,” or “a means, force or agency that restrains, checks free activity, or otherwise controls.” *State v. Ammons*, 136 Wn.2d 453, 457, 963 P.2d 812 (1998) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1937 (1986)).

No “partial” or “total confinement” is required in order for a defendant to escape from “custody” that arises solely by virtue of a court order restraining the defendant in some way. *State v. Breshon*, 115 Wn. App. 874, 880, 63 P.3d 871 (2003) (applying *State v. Ammons*, 136 Wn.2d 453, 460, 963 P.2d 812(1998) (“In any event, the majority [in

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<sup>3</sup> As this Court observed in *In re Bercier*, 178 Wn. App. 147, 313 P.3d 491 (2013), “[i]n hindsight, the [State] might have avoided this dispute by construing [defendant’s] residential treatment-based DOSA sentence as total confinement. See RCW 9.94A.030(51) (defining total confinement as “confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day”).

However, that is not to say that the State did not prove the defendant escaped from “custody” by court order as charged in the Information.

<sup>4</sup> The definitional statute excludes custody pursuant to chapter 13.34 RCW (Juvenile Court Act – Dependency and Termination of Parent-Child Relationship), RCW 74.13.020 and 74.13.031 (Child Welfare Services), and RCW 13.32A (Family Reconciliation Act).

*Ammons*] did not require a detention separate from the restriction of freedom imposed by being in custody, even if that was custody from restraint arising from a court order. We, therefore, reject the argument that Breshon and Simmons were not detained because they were not at least partially confined”).

In *Breshon*, two defendants were sentenced to the “Breaking the Cycle” (BTC) program, a chemical dependency treatment program, as an alternative to confinement.<sup>5</sup> 115 Wn. App. at 876. Each defendant was required to report to the program daily, was subject to random urinalysis testing, and was required to keep the program apprised of their current address and employment situation. *Id.* Each defendant initially reported to BTC; however, one continued to report for only a little over a week, and the other failed to report to the facility after the first day of reporting. *Id.* at 876-877. After the defendants were located and arrested on bench warrants, they were subsequently charged with first degree escape and were convicted. *Id.*

On appeal, the determination of whether the defendants could be convicted of escape for failing to report to BTC hinged on “whether [the defendants] were in custody because of ‘restraint pursuant to ... an order of

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<sup>5</sup> Defendants in *Breshon* were sentenced to the alternative sentence under Former RCW 9.94A.380, allowing alternatives to confinement for sentences of less than 12 months; this statute is now codified as RCW 9.94A.680.

a court.” *Id.* The *Breshon* court reiterated language from *Ammons, supra*, which held that restraint occurs where a defendant, by order of a court, is required to report to a certain place at a certain time. “According to *Ammons*, [defendants in *Breshon*] were in custody on the days they failed to appear because they were under restraint pursuant to a court order.” *Id.* at 878.

Further, the *Breshon* court held that the defendants’ sentences were different than a general court order imposing community custody conditions which include the requirement of treatment, observing among other things that the defendants’ sentences to BTC, (1) required them to physically appear at BTC daily; (2) would be credited against their jail sentences, and (3) were a substitute for total confinement. *Id.* at 880. Ultimately, the court held “that Breshon and Simmons were in custody pursuant to the court order than they report daily to BTC. When they failed to report, they committed first degree escape.” *Id.* at 881.

In this case, Mr. McClure stipulated that he was “under sentence for a conviction of possession of a controlled substance.” CP 21. The State presented evidence that his crime of conviction was a felony conviction, and that he had been sentenced to a residential DOSA sentence, “an alternative sentence to go to inpatient chemical dependency [sic] treatment, and they have to be there for three to six months and it’s a 24-month sentence.”

RP 149. Just as the defendants in *Breshon* were ordered to attend daily treatment in lieu of incarceration, Mr. McClure was ordered by the Court's DOSA modification order from September 25, 2015, to "re-enter treatment at ABHS and ... strictly comply with all program rules and requirements. Discharge date to be determined by ABHS. Upon release, defendant shall immediately report to DOC and shall strictly comply with all rules, requirements and directives." Ex. 6. This order mandated the defendant to re-enter and strictly comply with ABHS rules by using the word "shall."<sup>6</sup> The Warrant of Commitment further ordered that the defendant was to be "released into *the custody of ABHS* on 9/27/15 at 5:00 p.m. if at Jail, 7:00 p.m. if at Geiger." Ex. 6 (emphasis added).

It is irrelevant whether ABHS's representatives considered the defendant to be in ABHS's "custody." It is irrelevant that the defendant was not handcuffed or transported to ABHS in a locked vehicle. What is relevant, however, is whether the court order itself mandated that the defendant appear at a certain place at a certain time and restricted his freedom. The court order in this case did precisely that. It ordered

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<sup>6</sup> The general rule is that the word "shall" is presumptively imperative and operates to create a duty, rather than conferring any discretion. *Crown Cascade, Inc. v. O'Neal*, 100 Wn.2d 739, 658 P.2d 669 (1983).

Mr. McClure to report to ABHS for treatment on the 27<sup>th</sup> of September, and he was not allowed to leave until ABHS discharged him.

A residential DOSA alternative sentence requiring a defendant to serve three to six months in a treatment facility (or a modification order requiring the same) is certainly more restrictive of the freedom of an offender than the restrictions imposed on the defendants in *Breshon*. In *Breshon*, the defendants were required to report to treatment daily – and they were allowed to leave at night. As indicated above, Mr. McClure was ordered to attend inpatient treatment with a discharge date to be determined by the treatment agency. Unlike the defendants in *Breshon*, Mr. McClure had no discretion to leave ABHS at any time under the modification order.

However, like the defendants in *Breshon*, Mr. McClure was entitled to credit for the time he spent completing the treatment program, and the DOSA sentence is a statutorily authorized substitute for a sentence requiring total confinement.<sup>7</sup> This latter fact was especially compelling to the *Breshon* court as a reason that the order requiring the *Breshon* defendant to report to

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<sup>7</sup> A drug offender sentencing alternative (DOSA) allows qualified offenders to serve one half of a prison sentence either in prison or in residential drug treatment. RCW 9.94A.660(1), (3), .662, .664. It is an alternate form of a standard range sentence under the SRA. *State v. Smith*, 118 Wn. App. 288, 292, 75 P.3d 986 (2003). When a DOSA sentence is revoked for failure to comply with the terms of the order imposing the DOSA sentence, an offender is entitled to credit for all time previously served, including time on community custody. RCW 9.94A.660(7)(d); *In re Bercier*, 178 Wn. App. 147, 313 P.3d 491 (2013).

treatment was different than usual community custody or placement conditions. *Breshon*, 115 Wn. App. at 880-881.

Mr. McClure was in custody at the time he fled from treatment. He was under an order of the court to attend treatment, and his failure to comply with that order, which was presented to the jury, constituted sufficient evidence that he committed the crime of first degree escape.

**B. SUFFICIENT EVIDENCE WAS PRESENTED AT TRIAL TO PROVE THAT THE DEFENDANT WAS THE SAME “TREVOR MCCLURE” WHO WAS ORDERED TO REPORT TO TREATMENT AND WAS THE SAME INDIVIDUAL WHO FLED FROM THE TREATMENT FACILITY.**

Mr. McClure argues that insufficient non-hearsay evidence was presented proving that he was the defendant ordered to engage in treatment and was the same individual who fled from ABHS. Again, in determining whether sufficient evidence was presented, the court must view all evidence and all rational inferences from that evidence in the light most favorable to the State.

The State presented the modification order of Mr. McClure’s DOSA sentence. Ex. 6. On the first page of that document, it is indicated that CCO Tonya Wick was present for the modification hearing.<sup>8</sup> Ex. 6 at 1. The document is signed by a “Trevor McClure.” Ex. 6 at 3. At trial,

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<sup>8</sup> Ms. Wick never testified to this fact, but she was also not asked to testify to this fact. Nonetheless, the jury was able to read the order which indicated she was present at the time of the modification hearing.

Ms. Wick identified Mr. McClure as a defendant on her DOSA caseload, and indicated she had met him approximately four times. RP 148. She supervised Mr. McClure from May 19, 2015 to November 20, 2015, which includes the date of the escape. RP 148. She testified that the Mr. McClure she supervised (and who was in the courtroom) was transferred to her caseload when he received a DOSA sentence. RP 148-149. This is consistent with the original date of the DOSA sentence, April 29, 2015, as indicated on the modification order. Ex. 6 at 2. She identified Exhibit 6 as pertaining to Mr. McClure:

[By Prosecutor] I'm giving the witness the – or, the judgment and sentence – judgment and sentence, excuse me, order modifying the sentence.

Q. Does this look familiar to you?

A. Yes.

Q. And what does that order direct to happen?

A. This order directed Mr. McClure. He had to reenter treatment at ABHS.

Q. Okay. And what is the date on that judgment and sentencing.

A. 9/25

Q. So September 25<sup>th</sup>.

So because of that order, was Mr. McClure required to go to ABHS?

A. Yes, he was.

RP 151.

Ms. Wick further established that at no time after September did Mr. McClure ever contact her. RP 152. Ms. Wick issued a warrant for his arrest because he failed to report in to see her after leaving ABHS, in contravention of the requirements of the order. RP 152-153; Ex. 6. Ms. Wick also testified that to her knowledge, Mr. McClure did not go to ABHS after September 27, 2015. RP 153. This testimony in its totality was sufficient for a rational fact finder to determine that the defendant, Mr. McClure, was the same Mr. McClure who was under court order to report to ABHS on September 27, 2015.

The State also presented sufficient evidence that it was the defendant who fled from ABHS. The modification order established that Mr. McClure was in jail on September 25, and was to be released to an ABHS van on September 27. Ex. 6. Mr. Lowe, the ABHS driver testified that in September, he picked up three individuals from the jail, and two of them ran from ABHS when they arrived there. RP 126, 128. Mr. Lowe testified that he reported to ABHS staff inside the building that two individuals ran. RP 129.

Despite the hearsay objections during Ms. Norris' testimony, she ultimately testified that to *her personal knowledge* Mr. McClure never attended treatment after September 27, 2015:

Q. Do you know whether or not he reported?

[Defense Counsel] Objection. Calls for hearsay.

[The Court] Overruled. This is a basis-of-knowledge question.

Q. Do you remember if Mr. McClure arrived at ABHS?

A. He did not.

RP 138.<sup>9</sup>

Q. [By Prosecutor] Are you aware if Mr. McClure arrived at treatment after September 27<sup>th</sup>?<sup>10</sup>

[Defense Counsel]: Objection, Your Honor. Foundation.

The Court: Overruled. It goes to whether she was aware, not the basis of that.

So you can answer that question, just whether or not you were aware.

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<sup>9</sup> Defendant's assignment of error that this testimony was admitted in violation of ER 801 and 802 is discussed below.

<sup>10</sup> Defense counsel also asked Ms. Norris whether the event in question occurred on September 27, 2015, and Ms. Norris affirmed that this "event" occurred on that date. RP 143.

A. I am not aware of him entering treatment after September.

RP 142.

The State established that Mr. McClure was arrested on a DOC warrant after having changed his appearance by dying his hair. RP 121-124. Based on this evidence, as well as Exhibit 6, the jury could, therefore, infer that Mr. McClure was released from the jail as ordered, and was living in the community without having gone to ABHS as ordered.

Hearsay testimony

A trial court's decision to admit or exclude evidence is subject to review for abuse of discretion. A court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971). A decision is "manifestly unreasonable" if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A decision based on "untenable grounds" or made for "untenable reasons" is one that rests on facts unsupported by the record or was one reached by applying the wrong legal standard. *Id.*

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. ER 801. An error in admitting hearsay evidence that does not result in prejudice to the defendant because it is cumulative with other evidence is not grounds for reversal. *Brown v. Spokane County Fire Protection Dist. No. 1*, 100 Wn.2d 188, 668 P.2d 571 (2983).

Defendant argues that *State v. Green*, 157 Wn. App. 833, 239 P.3d 1130 (2010), requires reversal of Mr. McClure's case. However, *Green* is distinguishable from the case at hand. In *Green*, the State was required to prove the underlying reasons the school district issued a civil trespass notice prohibiting a parent from entering upon school property. However, in *Green*, the State failed to call any witness with personal knowledge of the incidents resulting in the trespass notice.

This case is different. First, the trial court sustained a number of objections made by the defense to questions that called for hearsay testimony, or testimony based on knowledge procured only through hearsay. On appeal, the defendant assigns error to two instances where the trial court overruled a hearsay objection.

Ms. Norris' testimony

Defendant alleges the following testimony should not have been admitted as it was hearsay:

Q. [By Prosecutor] Do you know whether or not he reported?

[Defense Counsel] Objection. Calls for hearsay.

[The Court] Overruled. This is a basis-of-knowledge question.

Q. Do you remember if Mr. McClure arrived at ABHS?

A. He did not.

RP 138.

This question did not call for hearsay. It simply called for Ms. Norris to testify whether she *knew* if Mr. McClure ever reported to ABHS. She could have had personal knowledge of this information from a source other than the hearsay email. After all, she was an admissions supervisor. The Court properly overruled this objection.

Ms. Wick's testimony

Defendant alleges the following testimony should not have been admitted as it was hearsay testimony:

Q. [By Prosecutor] Okay. Do you know if he arrived at ABHS?

A. I was told he did not arrive to ABHS.

[Defense Counsel] Objection, Your Honor.

[The Court] Overruled. There was testimony previously about that.

... There was in-court testimony so it wasn't an out-of-court statement.

RP 151.

The State agrees that, to the extent that Ms. Wick testified that she was *told* that Mr. McClure did not arrive at ABHS, the statement is hearsay. However, as indicated by the trial court, there had previously been testimony to this effect, based on Ms. Norris' personal knowledge, that Mr. McClure was not present at ABHS as ordered. And, there was subsequent testimony that Ms. Wick called the defendant mother's house, and was unable to locate him. Even if it was error admitting this evidence, the evidence was cumulative with other admissible evidence, and its admission was harmless. This court should not reverse on this basis. Sufficient evidence was presented that the individual who fled on September 27, 2015 from ABHS was the same Mr. McClure who was charged with the same.

**C. IF THE STATE IS THE SUBSTANTIALLY PREVAILING PARTY, THIS COURT SHOULD REQUIRE THE DEFENDANT AFFIRMATIVELY ESTABLISH A CLAIM OF INDIGENCY AS SET FORTH IN THIS COURT'S JUNE 10, 2016 ORDER PRIOR TO THIS COURT'S DETERMINATION OF WHETHER TO AWARD COSTS AS AUTHORIZED IN RCW 10.73.160 AND RAP 14.2.**

If the defendant is unsuccessful in this appeal, the defendant has requested this Court decline to impose the appellate costs authorized in RCW 10.73.160 and RAP 14.2.<sup>11</sup> This Court should require the defendant to provide the requested information as set forth in this Court's General Order dated June 10, 2016, regarding any claim of continued<sup>12</sup> indigency. To the State's knowledge, the defendant has not yet complied with this mandate, although the defendant indicated he would do so in his opening brief. Appellant Br. at 19-20. The imposition of costs is discretionary with this Court.

**V. CONCLUSION**

Because Mr. McClure was under court order to appear at ABHS and stay there until ABHS released him, he was in custody within the meaning of the escape statute. The State presented sufficient non-hearsay evidence that he was the individual who was ordered to engage in treatment at ABHS

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<sup>11</sup> It appears this Court has addressed this issue in its General Order dated June 10, 2016, dealing with motions on costs.

<sup>12</sup> It is unknown whether the defendant's circumstances have changed since the time of trial.

and failed to do so. The State respectfully requests that the court affirm the trial court and jury verdict.

Dated this 29 day of December, 2016.

LAWRENCE H. HASKELL  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Gretchen E. Verhoef", written over a horizontal line.

Gretchen E. Verhoef #37938  
Deputy Prosecuting Attorney  
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

TREVOR R. McCLURE,

Appellant,

NO. 34399-5-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on December 29, 2016, I e-mailed a copy of the Brief or Respondent in this matter, pursuant to the parties' agreement, to:

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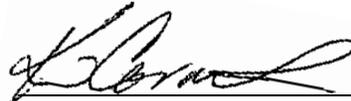
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12/29/2016

(Date)

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(Place)



(Signature)